

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7407 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MAVJIBHAI BHURABHAI BARAIYA: Petitioner.

Versus

STATE OF GUJARAT & 3 Others: Opponents.

Appearance:

M/S THAKKAR ASSOC. for Petitioner
Mr. S.P. Dave, APP for Respondents No.1 to 3.
MR SUNIL C PATEL for Respondent No. 4

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 20/11/97

ORAL JUDGEMENT

The petitioner, who is detained under the order of detention dated 19th August 1997 passed by the District Magistrate of Bhavnagar, invoking powers under Section 3(2) of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the 'Act') so as to prevent him from acting in any manner prejudicial to the

maintenance of the supply of the essential commodities to the people, challenges the legality and validity of the order.

2. The facts, which led the petitioner to prefer this petition, may in brief be stated. On 11th July 1997, the Supply Inspector of Bhavnagar inspected the provisions stores, namely Gopinath Provision Stores situated opposite to Plot No. 27 at Alang belonging to one Prahlad Joshi. During the inspection, the Supply Inspector could see that Prahlad Joshi had kept the stock of high-speed diesel, light diesel oil and furnace oil without any licence. He therefore found that deep enquiry into the matter was necessary. When further inquiry was made it was found that the said stock was obtained from Sajjatbhai and Saukatali. The statements of concerned persons were recorded. It was then revealed that the present petitioner had transacted qua the said stock in collusion with Shri Prahlad Joshi. On further enquiry the District Magistrate was satisfied that the petitioner was adopting several malpractices withholding or diverting the supply the essential commodities, with the result for want of supply of required quota in the market the people at large were experiencing several hardships, functioning of several factories or industries was either hampered or paralysed affecting the production and in the long run affecting the national economy. He then studying the materials and different circumstances formed the opinion that to have required supply of the essential commodities in the market and check petitioner's black-economy the only way out for him to pass the detention order and detain the petitioner in custody, because remedial measures under general laws were sounding dull. He therefore invoking the powers under the Act passed the impugned order which is called in question.

3. According to the petitioner, the copies of all the documents on which the detaining authority relies were not supplied to him, with the result he could not study the same and decide whether to defend and if yes what defence was available to him. Consequently his right to have effective representation was marred. It was made clear at the time of hearing that no doubt the copy of the licence on which the detaining authority relied upon was supplied, but it was not the complete and full copy. The terms and conditions thereof alleged to have been violated were not available in the copy supplied, some portion & pages were wanting. When thus true and full copy containing all the particulars was not given, the petitioner was not in a position to make

effective study of the allegations against him and decide what in fact was alleged and what defence if any he could have. On several other grounds the order is assailed, but when on this ground going to the root of the case, the whole petition is likely to be disposed of, I do not think it proper to deal with all those other grounds to which both agree. I will, therefore confine myself to the only aforesaid ground so as to decide this petition.

4. Against the ground taken for assailing the order, it was on behalf of the opponents submitted that the petitioner being the licence holder was in possession of the licence and was in know of all the terms and conditions of the licence. It was therefore not incumbent upon the detaining officer to supply the copy. The copy of the document was to be supplied provided the detenu was not in the know thereof or was not in possession of the said document.

5. Vide Article 22, protection against the arrest and detention has been given. As per that provision, the person who is arrested and detained in custody has to be informed as soon as possible about the grounds of his arrest and if that is not done the right to have effective representation against the detention at the earliest opportunity is jeopardised and therefore the detention cannot be held legal, constitutional and valid. In view of this provision of the Constitution, the detaining authority is under obligation to provide the copies of all the documents on which he relies without unjustly whilling away the time and thereby inform the detenu the grounds of the arrest so as to afford the detenu the earliest opportunity of making a representation against the order. If the copy is not supplied or the incomplete copy is supplied or the illegible copy is supplied, it would amount to non-supply of the copy which would be fatal to the authority passing the order of detention, because in that case the right to make representation is marred.

6. In this case, the copy is no doubt supplied but it is not the full & complete copy containing all the contents of the licence. As alleged, the breach of the conditions No. 3, 4(1)(2), 5, 6(2), 9 and 11 of the licence has been committed by the petitioner adopting different types of malpractices so as to have unjust enrichment or huge profit, and thus he was causing mischief to the larger good. The copy of the licence given does not contain the above stated conditions. The copy supplied is therefore not a full and complete one. It amounts to non-supply of the copy, with the result the

petitioner's right to have effective representation at the earliest is marred. The order in question therefore cannot be held to be legal and valid.

7. With regard to the second aspect of the contention, I may first refer the decision of the Supreme Court. In the case of M. Ahamedkutty vs. Union of India and Another - (1990) 2 SCC 1, while dealing with the likewise question, it is observed as under;

"It is immaterial whether the detenu already knew about their contents or not. In Mehrunissa v. State of Maharashtra it was held that the fact that the detenu was aware of the contents of the documents not furnished was immaterial and non-furnishing of the copy of the seizure list was held to be fatal. To appreciate this point one has to bear in mind that the detenu is in jail and has no access to his own documents. In Mohd. Zakir v. Delhi Administration it was reiterated that it being a constitutional imperative for the detaining authority to give the documents relied on and referred to in the order of detention pari passu the grounds of detention, those should be furnished at the earliest so that the detenu could make an effective representation immediately instead of waiting for the documents to be supplied with. The question of demanding the documents was wholly irrelevant and the infirmity in that regard was violative of constitutional safeguards enshrined in Article 22(5)."

The above stated observation of the Supreme Court is a clear answer to the contention raised by Mr. Dave, the learned APP. Regardless of the fact that the detenu is having the document in his possession or he knows about the contents thereof, the document once relied upon in passing the order, the copy thereof has to be supplied because the detenu in custody would not be able to go to the place where the document in his possession is kept and study the same. In view of his such inability, it is held that the copy of the document, on which the authority passing the detention order relies upon has to be submitted regardless of the fact that the original document is in possession of the detenu or the detenu knows the contents thereof. The contention, therefore, gains no ground to stand upon.

8. In view of the aforesaid reasons, when the copy

of the licence is not supplied to the petitioner, the right of the petitioner to make effective representation at the earliest is jeopardised. Consequently the order in question must be held unconstitutional, invalid and illegal. In the result, the order being unconstitutional and illegal is hereby quashed and the petitioner is ordered to be set at liberty forthwith, if no longer required in any other case. Rule accordingly made absolute.

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